Supreme Court, U.S.
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No. 88-1113

IN THE

Supreme Court of the United States

October Term, 1988

MIKULEC INDUSTRIES, INC.,

Petitioner,

vs.

ICI AMERICAS INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF IN OPPOSITION

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Questions Presented

1. Has petitioner demonstrated any special and important reasons for granting certiorari?

2. Whether petitioner's product claims against defendant were properly dismissed where there was no direct proof that the defendant's product was faulty, where petitioner failed to produce evidence excluding other likely causes, not attributable to defendant, for petitioner's injury, and where both the trial Court and the Court of Appeals found that no reasonable juror could have concluded that defendant's product was faulty?

3. Where petitioner moved for a bifurcated trial on specified liability issues and, the trial Court ruled there would be only one trial for all liability issues, and petitioner proceeded with trial on the specified issues, is the petitioner properly entitled to a second trial as to additional liability issues that it said it would like to try only if it prevailed at the first trial?

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BRIEF IN OPPOSITION

Respondent ICI Americas Inc. ("ICI")[1] opposes the Petition for grant of a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit unanimously affirming the District Court's directed verdict dismissing petitioner's complaint.

[1] ICI has no subsidiaries that are not wholly owned. ICI is wholly owned by its ultimate parent, Imperial Chemical Industries PLC ("PLC"). The names of corporations, not wholly-owned subsidiaries of PLC, which may be deemed affiliates of either ICI or PLC are set forth in the Appendix hereto.

Statement of the Case

This brief will not discuss the many factual errors in Petitioner's statement of the case.

Mikulec Operations. Petitioner Mikulec Industries, Inc. ("Mikulec") was a manufacturer in Salamanca, New York of fire extinguishers of various types, including extinguishers filled with the chemical extinguishing agent commonly called Halon. Respondent ICI is a manufacturer of Halon which it sold to Mikulec in large shipping tanks. In February 1981 Mikulec obtained a contract with the United States Airforce ("USAF") to supply a new large type of extinguisher not theretofore manufactured by Mikulec (D. Ex. 6, R. 2029-38B).[2]

In late October 1982 Mikulec started up operations for filling its new type extinguishers with Halon and began shipping them to various USAF bases (D. Ex. 41, R. 2041). At a USAF base in mid-March 1983 corrosion was noted inside an extinguisher from one of the first shipments. The USAF complained to Mikulec about the corrosion and numerous other deficiencies in Mikulec's extinguishers, including faulty couplings (D. Ex. 51, R. 2057-8), missing and improperly installed siphon tubes (D. Ex. 54, R. 2059), frozen float gauges, improper valves and missing Halon (D. Exs. 55 and 64-B, R. 2060, 2065-7). The USAF requested prompt corrective action by Mikulec (D. Ex. 63, R. 2064). Because of Mikulec's many defaults in performance, the USAF cancelled Mikulec's contract in July 1983 (P. Ex. 29, R. 1953-63), finding that Mikulec's deficiencies "did not arise out of causes beyond your control and without fault or negligence on your part."

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[2] Most references are to the Record to the Court of Appeals. References to pages of the Petition's Appendix are noted as App. p. ____.

A Speculative Claim. In August 1983 Mikulec brought suit against ICI alleging seven counts, including breach of contract, negligence, violations of antitrust and transportation ("DOT") laws, and fraud (R. 18-36). Mikulec's basic contention was that ICI sold it Halon containing excess moisture which caused the corrosion found by the USAF. In its correspondence and its separate litigation with the USAF, Mikulec also blamed the USAF for the corrosion, claiming the corrosion arose from the USAF's improper use, recharging, reassembly and maintenance of the extinguishers (R. 463-7, 773-4; D. Exs. 64-B, 67 and 107-A; R. 2065-8, 2108-10).

In blaming ICI for its corrosion, Mikulec was admittedly just "desperately shooting in the dark" as to the cause of corrosion (R. 767). Mikulec never tested the quality of the incoming Halon. The Mikulec officer in charge of investigating the source of the corrosion testified that it was "just speculation" that Halon caused the corrosion (R. 492-5, 863-5) and Mikulec plainly did not exclude other possible causes. Mikulec offered no testimony from the four persons who were presumed most knowledgeable about the likely causes of its corrosion, *viz.*: its Quality Control Manager, Mr. Lowry, its Engineer, Mr. Kuster, and its two chemical consultants, Professor Paige and Mr. Curzon, all of whose depositions were taken.

On the other hand, there was evidence that the corrosion-causing moisture could have come from several different sources, and not from the Halon.[3] None of Mikulec's smaller extinguishers that were filled with Halon from ICI experienced any such corrosion. All smaller extinguishers however, were manufactured and tested, as well as filled, in ways significantly different than those used for the larger USAF extinguishers (R. 209-10, 212, 438, 901).

Pre-Trial Proceedings. In November 1983 the Court denied Mikulec's motion for a temporary injunction. While Mikulec's initial appeal to the Court of Appeals was still pending and before ICI had obtained any discovery, Mikulec moved for an immediate trial without allowing any discovery to ICI (Docket Item 36). Thereafter, ICI's efforts at obtaining discovery as to any basis for the various claims was continually frustrated and delayed by Mikulec. Despite several motions by ICI to obtain such discovery (Docket Items 16, 45, 47, 62, 64, 90) and despite the Court's Order directing the same (Docket Item 78), Mikulec failed to furnish critical information. The Court's Order of March 6, 1986 acknowledged "plaintiff's less than satisfactory participation in discovery ... [and its] unhelpful

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[3] Among the other potential sources of moisture were: (i) from condensation from the hot/cold environment of the uninsulated plant where the empty cylinders were stored open to the ambient air (R. 377-8, 860, 900); (ii) from the water submersion leak test to which Mikulec subjected those cylinders (R. 401-2, 411-2); and (iii) from the water-laden compressed air used to pump Halon into the cylinders (R. 384-7, 413-5; D. Ex. 27 and 28, R. 2048-9), as well as other causes (R. 293, 392-3, 405-9; D. Ex. 24, R. 2046; D. Ex. 16, R. 2040). Because of its concern that water from the compressed air pump was the likely cause of moisture in its cylinders, Mikulec replaced the pump after the corrosion was found, inverted the pump and installed a "distance piece". (R. 334-6, 416-7; D. Exs. 29-A and 30-A, R. 2050-4).

responses" (Docket Item 118). Mikulec was still in the process of answering interrogatories even after the trial was well underway (Docket Items 123 and 124).

After ICI had taken several depositions, Mikulec moved to bifurcate the case into a liability trial and a possible subsequent damages trial (R. 78). Mikulec filed its Specification of Issues for trial (R. 82-4), all of which issues essentially related to the causes of its corrosion. Mikulec's Specification made no mention of its alleged claims for fraud, for antitrust violation or for DOT violation. Its Specification noted certain Secondary Issues that might be tried "in event that Plaintiff prevails on a Primary Issue".

Immediately prior to trial, the Court clearly warned Mikulec that "if we were going to go ahead with a trial today, . . . we were going ahead without those issues [of DOT and antitrust violations and fraud] and those issues would be out of the case" (R. 95, 99, 100). Mikulec thereupon proceeded to trial.

After the conclusion of Mikulec's case, the trial Court rendered its opinion (App. pp. 12a-14a) directing a verdict dismissing the complaint. The Court found that "no reasonable man and no reasonable woman could find for the plaintiff without wholesale resort to sympathy or prejudice, or other emotion" (App. p. 14a). On Mikulec's appeal, the Court of Appeals unanimously affirmed the dismissal (App. pp. 3a-6a). That Court similarly concluded that no "reasonable juror could have concluded that ICI delivered Halon that failed to meet the contract specifications" (App. p. 5a).

ARGUMENT

I. This case presents no compelling reason for further review.

In this products case, Mikulec claims that ICI's Halon caused corrosion that occurred in some Mikulec extinguishers after they had been used at USAF bases. The evidence demonstrated that the corrosion could have been caused by Mikulec's unusual methods of manufacture, testing and filling (*see* Note 3, *supra*). As Mikulec itself had claimed, the corrosion also could have been caused by the use, maintenance and refilling of the extinguishers by the USAF.

The Court of Appeals held "there is no direct proof" that ICI furnished defective Halon (App. p. 5a). That Court also observed (App. p. 5a) that Mikulec failed to meet its burden of producing evidence that excluded all other possible causes of corrosion not attributable to ICI, citing *Stewart v. Ford Motor Co.*, 553 F.2d 130, 137 (D.C. Cir. 1977) and *Shelden v. Hample Equipment Co.*, 89 A.D.2d 766, 453 N.Y.S.2d 934, 935 (3rd Dep't 1982) *aff'd* 59 N.Y.2d 618, 449 N.E.2d 1272 (1983). Both the District Court and the Court of Appeals found that no reasonable juror could have found ICI at fault (App. pp. 5a, 14a).

There is no logical or Constitutional reason for still another review of the evidence by this Court. The Petition appears chiefly premised (Pet. pp. 14-15) on a theory that the Court of Appeals, in unanimously affirming the directed verdict, somehow acted contrary to its own prior decisions in *Ajax Hardware v. Industrial Plants Corp.*, 569 F.2d 181, 186 (2d Cir. 1977) and *Meyers v. Selznick Company*, 373 F.2d 218, 221-4 (2d Cir. 1977). The dismissal, however, of Mikulec's appeal was wholly consonant with its usual standard for

affirmance.[4] In the *Meyers* case, for example, the Court's standard for affirming dismissal was that the case was "so clear that no reasonable man could determine the issue before the court in any way but one" (p. 233 of 373 F.2d). The Court of Appeals here similarly held that no "reasonable juror" could find ICI at fault (App. p. 5a).

Mikulec plainly failed to adduce any special or important reason for granting its Petition. It raises no genuine constitutional issue. It raises no important question of federal law. It alludes to no conflict in the case with a decision of another federal Court of Appeals or with the New York Court of Appeals.[5]

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[4] Judge Oakes, who was a member of the Court that dismissed Mikulec's appeal, was also a member of the Court that decided the *Ajax* case.

[5] Mikulec apparently recognizes that the Court of Appeals' decision here (App. p. 5a) did in fact follow the standard adhered to by New York's highest Court in *Shelden v. Hample Equipment Co.*, 89 A.D.2d 766, 453 N.Y.S.2d 934, 935 (3rd Dep't 1982) *aff'd* 59 N.Y.2d 1272 (1983). That case required a plaintiff to introduce evidence tending to exclude other likely causes for the alleged product injury.

II. Petitioner waived its other claims.

Mikulec moved for a bifurcated liability trial and then in its Specification of Issues stated those issues it sought to try in such liability trial (R. 78, 82-4). Its Specification of Issues did not include for fraud or for antitrust and DOT violations which the Court earlier found were "vague and conclusory" and "weak" (Docket Item 17).

Mikulec asserts that the bifurcation and its Specification of Issues did not constitute a waiver of the liability issues that were not tried. But the Court made clear that there would be only one trial on the liability issues. At the outset of trial, the trial Court warned Mikulec that: "If we have a bifurcation, we try liability; we don't try part of the liability and then try another part of liability later" (R. 99). Mikulec does not have any right to have a second liability trial.

Mikulec also claims that its Specification of "Secondary Issues" somehow reserved those claims for possible future trial (Pet. pp. 24-25). Petitioner's Specification of Issues provided, however, that its proposed "Secondary Issues" would be tried only "*in the event plaintiff prevails on a Primary Issue*". Having lost on the issues it chose to try, Mikulec cannot now have a second bite at the apple.

Lastly, Mikulec apparently attempts to fashion a "due process" claim based on alleged delays in trial that were occasioned by the trial of criminal cases. If there was any delay in starting the Mikulec trial, that blame must fall wholly on Mikulec and its "less than satisfactory participation in discovery". With the trial having begun even before Mikulec had furnished responsive discovery, Mikulec cannot claim in good faith that improper delays had denied it due process.

Conclusion

Two Courts have reviewed the evidence presented by Mikulec in support of its claims. Two Courts have found, upon all that evidence, that no reasonable juror could have found in Mikulec's favor on its claims. There is no reason for a further review of that evidence by this Court. The case presents no important question of federal or constitutional law. For all the reasons stated, certiorari should be denied.

Respectfully submitted,

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APPENDIX

CORPORATIONS WHICH MAY BE REGARDED AS SUBSIDIARIES OR AFFILIATES OF PLC

ACF & SHIRLEY LTD, ADVANCED SYSTEMS CONSULTANTS LIMITED, AFL PTY LIMITED, AFTRADE PTY LIMITED AGCHEM PTY LTD, AGTECH DEVELOPMENTS (N.Z.) LIMITED, ALCHEM INC., ALCHEMIE RESEARCH CENTRE (PRIVATE) LTD, AMMONIA COMPANY OF QUEENSLAND PTY LIMITED, ANDREWS LEES (NZ) LTD, ATLAS DE MEXICO, S.A. DE C.V., ATLAS TAIWAN CORPORATION, ATTIVALAC S.R.L., AUSTRAL-PACIFIC FERTILIZERS LIMITED, AUSTRALIAN FERTILIZERS LIMITED, AUSTRALIAN SUN RESEARCH LABORATORIES PTY LIMITED, AUSTRALIAN SUN RESEARCH LABS, INC., AVON MANUFACTURING CO LIMITED

BALM PAINTS (NZ) LIMITED, BAY INDUSTRIES LIMITED, BERGER PAINTS NEW ZEALAND LTD, BJN (FIJI) LTD ICI SYNCHEM LIMITED CATOLEUM PTY LIMITED, BJN HOLDINGS NEW ZEALAND LTD, BJN INVESTMENTS PTY LTD BPK INDUSTRIES PTY LTD, BRASEK PARTICIPACOES LTDA, BRITISH PAINTS (PNG) PTY LTD, BRITISH PAINTS NZ LTD

CATOLEUM NEW ZEALAND LIMITED, CHEMETICS DO BRASIL COMERCIO & INDUSTRIA LTDA, CHEMICAL COMPANY OF MALAYSIA BERHAD, CHEMICAL SUPPLIES LIMITED, CHOPCAIR LTD, COLOURMARKET NEW ZEALAND LTD, COMPAGNIE EUROPEENNE DES PREINTURES JULIEN SA, COMPANHIA DE

EXPLOSIVOS VALPARAIBA, CONSOLIDATED FERTILIZERS LTD, COOPERS ANIMAL HEALTH AUSTRALIA LIMITED, COOPERS ANIMAL HEALTH NZ LIMITED, CXA LIMITED

DENDRITE AUSTRALIA PTY LTD, DENDRITE CORP (NZ) LTD, DENKEMIX INC., DULUX HOLDINGS LIMITED, DULUX NEW ZEALAND LIMITED, DULUX PAPUA NEW GUINEA PTY LTD, DYECHEM FINANCE LIMITED, DYES AND CHEMICALS LIMITED

EASTERN NITROGEN LIMITED, EBONEX TECHNOLOGIES INC., EXPLO INDUSTRIAS QUIMICAS E EXPLOSIVOS S.A., EXPLONOR INC., EXPLOSIFS SAGUENAY INC.

FLEX PRODUCTS INC.

G F REAL ESTATE PTY LIMITED, GENERAL FERTILIZERS LIMITED, GEORGE SHIRLEYS (NSW) PTY LTD, GUTHRIE BOWRON & CO LTD.

HYDROLINE P/L

I.C. INSURANCE (AUSTRALIA) LIMITED, I.C. INSURANCE ADVISORY SERVICES PROPRIETY LIMITED, I.C.I. FRANCE S.A., I.C.I. PAINTS (MALAYSIA) SDN BHD, ICI AGROCHEMICALS (MALAYSIA) SDN BHD, ICI ALFLOC LIMITED, ICI ASIATIC (AGRICULTURE) COMPANY LIMITED, ICI ASIATIC CHEMICALS CO LTD, ICI AUSTRALIA ENGINEERING PROPRIETARY LTD, ICI AUSTRALIA FINANCE LIMITED, ICI AUSTRALIA INVESTMENTS PTY LTD, ICI AUSTRALIA LIMITED, ICI AUSTRALIA NOMINEES PTY LTD, ICI AUSTRALIA OPERATIONS PTY LTD, ICI AUSTRALIA PETROCHEMICALS LIMITED, ICI AUSTRALIA

SERVICES PTY LTD, ICI BANGLADESH MANUFACTURERS LIMITED, ICI BIOCOL LIMITED, ICI C & P FRANCE S.A., ICI CHILE SA ICI DIMINICANA S.A., ICI DULUX PAPUA NEW GUINEA PTY LIMITED, ICI EXPLOSIVES (QLD) PTY, ICI EXPLOSIVES SOUTH EAST ASIA PTE LTD, ICI FERTILIZERS (MALAYSIA) SDN BERHAD, ICI FIJI LIMITED, ICI INDUSTRIAL CHEMICALS (MALAYSIA) SDN BHD, ICI INSTRUMENTS PTY LTD, ICI KERN, ICI NEW GUINEA PLASTICS PTY LTD, ICI NEW ZEALAND LIMITED, ICI PAINTS (THAILAND) LIMITED, ICI PAKISTAN LIMITED, ICI-PHARMA LIMITED, ICI-WOOBANG CO., LTD., ICIBRA PARTICIPACOES E COMERCIO LTDA, IDAC (ITALIA) S.R.L., IEL LIMITED, IMPERIAL CHEMICAL INDUSTRIES DE CENTRO AMERICA, S.A., IMPKEMIX AMERICAS HOLDINGS INC, IMPKEMIX HOLDINGS SOUTH EAST ASIA PTE LTD, IMPKEMIX HONGKONG LIMITED, IMPKEMIX INVESTMENTS (NZ) LTD, INCITEC INVESTMENTS LTD, INCITEC LTD, INDUSTRIAL CONTAINERS LTD, INITIATING EXPLOSIVES SYSTEMS PTY LIMITED, INTERPLASTIC-WERK AKTIENGESELLSCHAFT

J ARMANDO INDUSTRIA E COMERCIO DE PLASTICOS LTDA

K C CHEMICAL INDUSTRIES P/L, KAOHSIUNG MONOMER CO LTD, KATALCO LIMITED, KOORAGANG INVESTMENTS PTY LIMITED,

LEHARD (TRADING) LTD, LEHARD LTD

MARLBOROUGH BIO-POLYMERS LIMITED, MAX AGRICULTURE SDN BHD, MINZIMP EXPLORATION LTD, MODO CHEMETICS ENGINEERING LTDA,

NALCO SOUTH EAST ASIA PRIVATE LIMITED, NALFLEET, BULL AND ROBERTS INC., NALFLOC LIMITED, NALFLOC NORGE, NEWCASTLE CHEMICAL CO. PTY LTD, NILCRA CERAMICS (EUROPE) LIMITED, NILCRA CERAMICS INC., NILCRA CERAMICS PTY LTD, NORTHLAND EXPLOSIVES INC., NUCLEAR TECHNIQUES INTERNATIONAL (M) SDN BHD, NUWEST EXPLOSIVES INC.

OLEFINES PTY LTD, ORBEA O DE JULIO S.A.I.C., ORBEA ARGENTINA SOCIEDAD ANONIMA,

PACIFIC PAINTS PTY LTD, PAPL NEW ZEALAND LIMITED, PHILLIPINE EXPLOSIVES CORPORATION POLYCELL PRODUCTS PTY LTD, PORCUPINE POWDER COMPANY INC., PROPAFILM P/L, PT ICI FARMASI INDONESIA, PT ICI PESTISIDA INDONESIA, PT NALCO PERKASA, PT TECHMASTER WELL SERVICES INDONESIA

RETEC LIMITED, RUANE INVESTMENTS PTY LTD,

SAI TUBULAR SERVICES LIMITED, SARKEM LIMITED, SEEDKEM PTY LTD, SELLEYS CHEMICAL CO NZ LTD, SELLEYS CHEMICAL CO PTY LTD, SENTINEL S.A., SILENUS INSTRUMENTS P/L, SILENUS LABORATORIES PTY LIMITED, SOCIETE EUROPEENNE DE MAIS SA, SOCIETY MALGACHE DES LAQUES VALENTINE, STAHL ASIA TRADING PRIVATE LTD, STAHL CHEMICAL ASIA PRIVATE LTD, STAUFFER CHEM CO (NEW ZEALAND) LTD, STAUFFER DE MEXICO, STRAUSS 9 DE JULIO S.A.I.C.,

TECHMASTER WELL SERVICES (MALAYSIA) SUN. BHD, TECHMASTER WELL SERVICES AUSTRALIA PTY LTD, TEMA CHEMICALS LTD, TERRA TRADING CO PTY LIMITED, TINGEYS LIMITED, TRIBOL S.A.,

UNITED PACIFIC DRILLING P/L, UPEC INDUSTRIES LIMITED,

VALCHEM PTY LTD,

WALPAMUR LTD, WEST AFRICAN EXPLOSIVES & CHEMICALS LIMITED,

Z-TECH CORPORATION, Z-TECH PTY LIMITED, Z-TECH ZIRCONIA PTY LTD, ZEST PRODUCTS PTY LIMITED

CORPORATIONS IN WHICH PLC HAS A MINORITY INTEREST

AECI LIMITED AFEX HOLDINGS (PROPRIETARY) LIMITED, AGROCENTRE FARNHAM INC, AGROCENTRE ST HYACINTHE LIMITED, AGROCENTRE ST. REMI INC, AGROCENTRE VINISOL INC., AGRO INC, ALBRIGHT & WILSON (AUSTRALIA) LIMITED, ARABIAN POLYOL COMPANY LIMITED, ASAHI FLUOROPOLYMERS COMPANY LIMITED, ASSOCIATED IRISH CASES LIMITED, ATIC INDUSTRIES LIMITED

BAPCO, BARCLAYS DE ZOETE WEDD SECURITIES (ASIA) LTD, BASIC MANAGEMENT INC, BELASIS HALL TECHNOLOGY PARK LIMITED, BELMONT FDARM SUPPLY, BESGUARD LIMITED, BESSEMER ROAD MANAGEMENT CO LTD, BLAIR INTERNATIONAL

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CAFCHEM LIMITED, CANADIAN FRACMASTER LIMITED, CANAMEX, S.A. DE C.V., CANSO CHEMICALS LTD, CARDINAL FARM SUPPLY LIMITED, C.F. BRAUN INC., CFX COMPUTER SOLUTIONS, CHEMETICS LAVALIN INC., CHEMICAL INDUSTRIES (COLOMBO) LIMITED, COLOMBIANA DE COLINA LTDA, COLOUR PRINTERS SPECIALIST (SINGAPORT) PTE LTD, COOPERS ANIMAL HEALTH (HOLDINGS) LIMITED, CORNWALL CHEMICALS LIMITED, COULTER FARM SERVICES, INC., COVENANT INDUSTRIES LIMITED, COVILINK LIMITED, CUPREX JOINT VENTURE

EAST-CHEM INC., ELECTROCLOR S.A.I.C. (ABBREVIATION), ELECTROQUIMICA ARGENTINA S.A.I.C., ELLIX & EVERARD PLC, EMIRATES EXPLOSIVES (PRIVATE) LIMITED, ENTERPRISE OIL PLC, EUROPEAN VINYLS CORPORATION HOLDINGS BV

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GBC SCIENTIFIC INSTRUMENTS P/L, GARST RESEARCH FARMS INC, GAS GATHERING PIPELINES (NORTH SEA) LIMITED, GLOBAL HOLONETICS CORPORATION, GRAND FALLS AGROMART LTD, GRAND RIVER FARM SUPPLY LIMITED

HARTLAND AGROMART LTD, HARVEX AGROMART INC, HIFLON PLASTICOS AVANCADOS LTDA, HILDENER AKTIENBAUGESELLSCHAFT, HISPAVIC INDUSTRIAL S.L., HOEGY S FARM SUPPLY LIMITED

ICI-FARMA S.A., ICI-ZELTIA S.A., IDAC BELGIUM, I.D. CHEMICALS LIMITED, IIE LIMITED, INNOSYL INC, INTELLIGENT SYSTEMS INTERNATIONAL LIMITED, INTERMEDIOS ORGANICOS S.A., IRISH FERTILIZER INDUSTRIES LIMITED

KASEI-FIBERITE CO. LTD, KROMO S.A. DE C.V.

LAURENCE JAMES ELECTRICAL LTD, L'ENVIRNMENT EAGLEBROOK (QUEBEC) LTEE, LES ENGRAIS LANAUDIERE INC, LES EXPLOSIFS CHRETIEN LTEE, LIBRA INTERNATIONAL INSURANCE LIMITED, LIMPACT INDUSTRIES MALPEQUE FERTILIZERS LTD.

MAPLE FARM SUPPLY LIMITED, MARLOW FOODS, MAX UNDERHILL S FARM SUPPLY LIMITED, MONTROSE CHEMICAL CORPORATION OF CALIFORNIA, MTM PLC, MUNRO FERTILIZERS LTD.

NEW ZEALAND PHARMACEUTICALS LIMITED, NIPPON POLYURETHANE INDUSTRY CO LTD, NUREL S.A.

OAKWOOD AGROMART LTD, OXFORD AGROPRO LTD

PHILLIPS-IMPERIAL PETROLEUM LIMITED, PHYTOTECH SOCIETE ANONYME, PIGMENT MANUFACTURERS OF AUSTRALIA LTD, P.T. ICI PAINTS INDONESIA

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RECUPERADOS QUIMICOS LDA, ROCK ENVIRONMENTAL LIMITED, RUBICON INC

SABAG INC, SCOTLAND AGROMART LIMITED, SELBAT S.A.R.L., SERCO LUBRICANTES METALICOS SA, SES IBERICA SA, SETTERINGTON S FERTILIZER SERVICE LIMITED, SIDLAW GRAIN COMPANY LTD, SIROTHERM INC, SOCIEBAD SARL, SOCIETE ANONYME NEGOCITAS, SOCIETE DU POLYETHELENE DE FOS, SOCIETE GUINEENNE DE PRODUITS EXPLOSIFS ET CHIMIQUES (SOPEC), SPRUCEDALE AGROMART LIMITED, SWAZILAND AGRICULTURAL SUPPLIERS (PTY) LTD

TEIJIN AGROCHEMICALS LTD, TIOXIDE GROUP PLC, TRICIL LIMITED, TRI-COUNTY AGROMART LTD.

UNICORN PLANT BREEDERS LIMITED, UNISIGMA G.I.E. DE RECHERCHE ET SELECTION

VINICLOR S A, VINIDEX TUBEMAKERS PTY LTD

WATFORD GRAIN AND FEED, WEST ISLE FARM SUPPLY, WESTON HYDE PRODUCTS LIMITED

128639 CANADA INC